

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

* * * * *

UNITED STATES OF WISCONSIN,

Plaintiff,

-vs-

Case No. 11-CR-133-BBC

THOMAS VALLEY,

Madison, Wisconsin

April 23, 2013

Defendant.

1:35 p.m.

* * * * *

STENOGRAPHIC TRANSCRIPT OF PLEA HEARING
HELD BEFORE DISTRICT JUDGE BARBARA B. CRABB,

APPEARANCES:

For the Plaintiff: Office of the United States Attorney
BY: ELIZABETH ALTMAN
Assistant United States Attorney
660 West Washington Avenue
City Station, Ste. 303
Madison, Wisconsin 53703

For the Defendant: Law Office of Greg Dutch
BY: GREGORY DUTCH
119 MLK King Jr. Blvd., Ste 202
Madison, Wisconsin 53703

Nicholson & Gansner, S.C.
BY: NATHAN OTIS
14 W. Mifflin Street, Ste. 103
Madison, Wisconsin 53703

Also appearing: Thomas Valley, defendant
Rhonda Frank-Loron, U.S. Probation

Officer

Lynette Swenson RMR, CRR, CBC
Federal Court Reporter
U.S. District Court 120 N. Henry St., Rm. 520
Madison, WI 53703 (608) 255-3821

1 (Call to order)

2 THE CLERK: Case Number 11-CR-133. *The United*
3 *States of America v. Thomas R. Valley* called for a plea
4 hearing. May we have the appearances, please.

5 MS. ALTMAN: Good afternoon, Your Honor. The
6 United States appears by Elizabeth Altman.

7 THE COURT: Thank you.

8 MR. DUTCH: Good afternoon, Your Honor.
9 Mr. Valley is present in court. I also have Mr. Nathan
10 Otis, who is assisting me in this case present in court.

11 THE COURT: O-t-i-s?

12 MR. OTIS: Yes, Your Honor.

13 THE COURT: Okay. All right. Mr. Valley, I'm
14 going to ask you some questions that have to be answered
15 under oath. Would you stand and raise your right hand
16 to take the oath.

17 **THOMAS VALLEY, DEFENDANT, SWORN,**

18 THE COURT: Mr. Valley, I have to tell you that
19 if the government were to prosecute you for perjury or
20 false statements, it would have the right to use against
21 you any of the statements you give under oath today. Do
22 you understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: And for the record, how old are
25 you?

1 THE DEFENDANT: 28.

2 THE COURT: How much formal education have you
3 had?

4 THE DEFENDANT: Up to 11th grade.

5 THE COURT: Through 11th grade or to 11th
6 grade?

7 THE DEFENDANT: Through. Sorry.

8 THE COURT: Okay. Is there any reason why you
9 might not be able to understand what's being said to you
10 today such as being ill, being on medication, being very
11 tired or being under the influence of any drugs or
12 alcohol?

13 THE DEFENDANT: None.

14 THE COURT: And Mr. Dutch, have you and
15 Mr. Valley received a copy of the Information in this
16 case?

17 MR. DUTCH: We have, Your Honor. You took your
18 medication today; correct?

19 THE DEFENDANT: Yes.

20 MR. DUTCH: So he is on medication.

21 THE COURT: Okay. But it's not interfering
22 with your ability to understand?

23 THE DEFENDANT: No.

24 THE COURT: Okay.

25 THE DEFENDANT: I'm completely and totally able

1 to understand.

2 THE COURT: Back to the other question.

3 Mr. Dutch, have you received a copy of the Information?

4 MR. DUTCH: Yes. We do have a copy of the
5 Information.

6 THE COURT: Do you wish to have it read aloud?

7 MR. DUTCH: No, we would waive reading of the
8 Information.

9 THE COURT: Then Ms. Altman, if you would state
10 the maximum penalties to which Mr. Valley could be
11 subject if he's found guilty.

12 MS. ALTMAN: Yes, Your Honor. There are two
13 substantive charges in the Information. Each carries a
14 mandatory minimum penalty of five years in prison,
15 maximum penalties of 20 years in prison; a \$250,000
16 fine; a lifetime period of supervised release; a \$100
17 special assessment, and the entry of an appropriate
18 restitution order.

19 THE COURT: Do you have any idea at this point
20 what the restitution amount might be?

21 MS. ALTMAN: I don't, Your Honor.

22 THE COURT: Mr. Valley, because the charges
23 against you carry penalties in excess of a year, you
24 have a right under the United States Constitution not to
25 be prosecuted in the absence of an Indictment returned

1 by the grand jury. The authors of our Bill of Rights
2 believe that no one should be prosecuted for a felony
3 unless a grand jury had determined there was probable
4 cause to believe the person had committed the crime.

5 The grand jury is made up of 23 persons. Their
6 names are drawn at random from the voting lists of this
7 judicial district. The grand jury meets approximately
8 every three weeks here in Madison. Sixteen of the grand
9 jurors must be present in order to conduct business and
10 at least 12 of them must find probable cause to believe
11 a person guilty in order to return an Indictment. If at
12 least 12 do not agree that the government has
13 established probable cause of guilt, the grand jury
14 cannot return an Indictment and the government cannot
15 prosecute the person.

16 The grand jury meets in secret. The United States
17 Attorney or one of his assistants presents a case to the
18 grand jury and will call witnesses before the grand
19 jury. A court reporter is present and an interpreter,
20 if necessary, but no one else can be in the room. When
21 the grand jury votes, even the United States Attorney,
22 the court reporter, and any interpreter are all barred
23 from the room.

24 Do you understand that if you proceed on this
25 Information, you are giving up a right guaranteed by the

1 United States Constitution to be proceeded against only
2 by Indictment?

3 THE DEFENDANT: Yes.

4 THE COURT: And I have a waiver that you have
5 signed; is that correct?

6 THE DEFENDANT: Yes.

7 THE COURT: All right. And I'll sign it as of
8 today's date also. The record should show that you have
9 executed a written waiver of your right to be proceeded
10 against only by an Indictment returned by the grand
11 jury.

12 Then Mr. Dutch, do you know any reason why I should
13 not ask Mr. Valley what his plea is to the charges in
14 the Information?

15 MR. DUTCH: No, Judge.

16 THE COURT: Mr. Valley, what is your plea to
17 Count 1 of the Information?

18 THE DEFENDANT: Guilty.

19 THE COURT: What is your plea to Count 2?

20 THE DEFENDANT: Guilty.

21 THE COURT: Mr. Dutch, have you had a chance to
22 talk with Mr. Valley about possible defenses he may have
23 to this charge and about the consequences of a plea of
24 guilty?

25 MR. DUTCH: Yes, Judge.

1 THE COURT: And Mr. Valley, do you think you've
2 had enough time to talk with Mr. Dutch about these
3 matters?

4 THE DEFENDANT: Yes.

5 THE COURT: Have you talked with him about the
6 sentencing guidelines and how those could affect your
7 sentence?

8 THE DEFENDANT: Yes, he has.

9 THE COURT: And would you tell me in your own
10 words what the government is charging you are doing?
11 First in Count 1.

12 THE DEFENDANT: Count 1 would be a photo of a
13 person naked under the age of 18.

14 THE COURT: And the government says that that
15 occurred some time between December 1st, 2010 and on or
16 about January 11th, 2011?

17 THE DEFENDANT: Yes.

18 THE COURT: And the government says that you
19 knowingly received that picture; that is, it wasn't a
20 mistake or an accident or a surprise to you. You
21 knowingly received it.

22 THE DEFENDANT: Yes.

23 THE COURT: And you received it using a
24 facility of interstate commerce.

25 THE DEFENDANT: Yes.

1 THE COURT: And I assume by that that means a
2 cell phone or computer.

3 THE DEFENDANT: Yes.

4 THE COURT: And that the visual depiction was a
5 minor engaging in sexually explicit conduct.

6 THE DEFENDANT: Yes.

7 THE COURT: And what the government says is
8 specifically you received a text message via cellular
9 telephone of a visual depiction of the lascivious
10 exhibition of the genitals and pubic area of Minor B.

11 THE DEFENDANT: Yes.

12 THE COURT: And that for the purpose of this
13 Information, that visual depiction has been identified
14 as 121210205550.jpg.

15 THE DEFENDANT: Yes.

16 THE COURT: And then for Count 2, what do you
17 understand about that charge?

18 THE DEFENDANT: It was the exact same as the
19 first charge. It's a nude photo of a person under 18.

20 THE COURT: And you know this was on or about
21 February 27th, 2011?

22 THE DEFENDANT: Yes.

23 THE COURT: And it was in the Western District
24 of Wisconsin.

25 THE DEFENDANT: Yes.

1 THE COURT: And again, the government says you
2 knowingly received a visual depiction --

3 THE DEFENDANT: Yes.

4 THE COURT: -- using your cell phone; facility
5 of interstate commerce.

6 THE DEFENDANT: Yes.

7 THE COURT: And again, the depiction was a
8 minor engaging in sexually explicit conduct.

9 THE DEFENDANT: Yes.

10 THE COURT: And it was a visual depiction of
11 the lascivious exhibition of the genitals and pubic area
12 of Minor C, and that depiction is identified as
13 YA01_001.jpg.

14 THE DEFENDANT: Yep.

15 THE COURT: Do you understand that if I accept
16 your plea and adjudge you guilty, you could be subject
17 to penalties up to and including the maximum that
18 Ms. Altman went over and that is a maximum term of 20
19 years, a mandatory minimum term of five years; a fine of
20 as much as \$250,000; a criminal assessment penalty of
21 \$100; supervised release of a lifetime, and restitution
22 if it is determined that any is applicable, and you
23 could be subject to additional time in custody if you
24 violated the terms of your supervised release and were
25 sent back to prison and you could be subject to

1 deportation if you're not a citizen?

2 THE DEFENDANT: Yes.

3 THE COURT: Do you understand that when I
4 sentence you, I can give you any sentence not exceeding
5 the statutory maximum but that I will take into
6 consideration the sentencing guidelines when I'm
7 deciding what sentence to impose on you. The probation
8 office will calculate the guidelines starting with the
9 number of points attributable to these offenses; the
10 fact that you have accepted responsibility by pleading
11 guilty, assuming there's no reason to deny you this
12 credit; your role in the offense; your prior criminal
13 record, and any other factor that's relevant.

14 After calculating your guideline range, the
15 probation officer will make a recommendation to the
16 court. Mr. Dutch and Ms. Altman will each have an
17 opportunity to object to the recommendation. I'll rule
18 on any objections and determine the applicable guideline
19 range. I'm not required to sentence you within the
20 guideline range. I can give you a higher sentence or a
21 lower one if I believe that such a sentence would better
22 carry out the purposes of sentencing.

23 Do you understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: Do you understand that by pleading

1 guilty, you're giving up your right to trial?

2 THE DEFENDANT: Yes.

3 THE COURT: Do you understand that you have the
4 right to continue to plead not guilty?

5 THE DEFENDANT: I do.

6 THE COURT: Do you understand that if you had
7 continued to plead not guilty, you would be entitled to
8 a trial by jury and there would be 12 who would serve on
9 the jury and you could help choose the 12 from those who
10 came in for jury selection?

11 THE DEFENDANT: Yes.

12 THE COURT: Do you understand that all 12
13 jurors would have to agree unanimously before --

14 THE DEFENDANT: Yes.

15 THE COURT: -- they could find you guilty?

16 THE DEFENDANT: I do.

17 THE COURT: Do you understand that throughout a
18 trial you would be presumed to be innocent and the
19 government would have the burden of proving beyond a
20 reasonable doubt that you committed these offenses?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you understand that at a trial,
23 you would have the right to confront the witnesses
24 against you and cross-examine them through Mr. Dutch;
25 you would have the right to testify in your own behalf

1 if you chose to, but you could not be required to
2 testify; you would have the opportunity to present
3 testimony and other evidence in your defense, and you
4 could require witnesses to come to court to testify on
5 your behalf?

6 THE DEFENDANT: I do.

7 THE COURT: Do you understand that you have a
8 right to court-appointed counsel at government expense
9 through all stages of this proceeding?

10 THE DEFENDANT: Yep.

11 THE COURT: And Mr. Dutch is serving as
12 court-appointed counsel; correct?

13 THE DEFENDANT: Um-hmm.

14 MR. DUTCH: Yes.

15 THE DEFENDANT: Yes.

16 THE COURT: Do you understand that under the
17 Constitution of the United States, no one can be forced
18 to admit that he or she has committed a crime?

19 THE DEFENDANT: I know.

20 THE COURT: Do you understand that when you
21 plead guilty, you're giving up this right against
22 self-incrimination?

23 THE DEFENDANT: I do.

24 THE COURT: And Ms. Altman, would you state for
25 the record the terms of the agreement you've reached

1 with the defense.

2 MS. ALTMAN: Yes, Your Honor. This is a
3 conditional plea. The defendant has filed a motion --
4 two motions to suppress in this case. As of this date,
5 briefing has not yet been completed and we have not yet
6 received a report and recommendation or a final ruling.

7 If the Court ultimately denies the motions, subject
8 to the Court's consent, the United States consents to
9 the defendant pleading guilty conditionally, reserving
10 the right to have the Court of Appeals reverse an
11 adverse determination of his motion. If the Court
12 ultimately grants the defendant's motion, the United
13 States agrees that he may then withdraw his plea.

14 The United States agrees that this guilty plea will
15 completely resolve all possible federal criminal
16 violations that have occurred in the Western District of
17 Wisconsin. This is provided that the criminal conduct
18 relates to the conduct described in the Indictment, and
19 while the plea letter does not say it, also the
20 Information, and that the criminal conduct was known to
21 the United States as the date of this plea agreement.

22 The defendant understands that the United States
23 will make its full file available to the probation
24 office for its use in preparing the presentence report.
25 The United States agrees to move to dismiss the

1 Indictment at the time of sentencing.

2 This plea agreement expired on or before April 15
3 of 2013. The defendant did sign it prior to that date I
4 believe.

5 The defendant agrees that while not pleading guilty
6 to the charges in the original Indictment, the conduct
7 which serves as the basis for the Indictment did occur
8 and he is responsible for it. The parties stipulate
9 that the commission of the additional offenses shall be
10 treated as if the defendant had been convicted of the
11 additional charges.

12 The defendant understands that he may be ordered to
13 pay restitution in this case. The figure will either be
14 agreed upon prior to the parties at sentencing or we
15 will ask the Court to determine restitution if the
16 parties cannot agree.

17 The defendant agrees to complete a financial
18 statement and return it to my office within one week of
19 the guilty plea hearing. He agrees that the probation
20 office may disclose to the United States the net worth
21 and cash flow statements he completes in the preparation
22 of the presentence report.

23 Paragraphs 9, 10, 11, 12, 13 and 14 deal with the
24 forfeiture of the assets listed in the Information.
25 Essentially the defendant agrees that he is the sole

1 owner of the property and he knowingly and voluntarily
2 waives his right to a jury trial on the forfeiture of
3 the assets. He also knowingly and voluntarily waives
4 all constitutional, legal and equitable defenses to the
5 forfeiture of the assets in any proceeding.

6 In the event of an appeal by either party, the
7 United States reserves the right to make arguments in
8 support of or in opposition to the sentence imposed by
9 this Court. The defendant understands that sentencing
10 discussions are not part of the plea agreement and that
11 he should not rely upon the possibly of any sentence
12 based upon discussions between his counsel and the
13 United States.

14 By his signature on this plea agreement, he
15 acknowledges that the United States has made no promises
16 or guarantees regarding the sentence and he also
17 acknowledges his understanding that the Court can impose
18 any sentence up to and including the maximum penalties
19 set forth in paragraph 1 of this plea letter.

20 He acknowledges also by his signature that this is
21 the only plea letter in the case at this point and the
22 prior plea letters have been rescinded. With regard to
23 paragraph 19 since this plea letter was sent out, it has
24 received approval by the United States Attorney.

25 THE COURT: Thank you. Mr. Dutch, is that your

1 understanding of the agreement?

2 MR. DUTCH: Yes, Judge.

3 THE COURT: And Mr. Valley, is it your
4 understanding?

5 THE DEFENDANT: Yes.

6 THE COURT: Did anyone force you or threaten
7 you to plead guilty?

8 THE DEFENDANT: No.

9 THE COURT: Did anyone make you any other
10 promises of any kind to get you to plead guilty?

11 THE DEFENDANT: No.

12 THE COURT: Did anyone tell you that you're
13 going to get a particular sentence?

14 THE DEFENDANT: No.

15 THE COURT: Do you have any reason to think
16 you're going to get a particular sentence?

17 THE DEFENDANT: No.

18 THE COURT: Do you understand that you're not
19 free to withdraw your plea of guilty even if I do not
20 accept the government's recommendations?

21 THE DEFENDANT: I do.

22 THE COURT: And Ms. Altman, what would you have
23 been prepared to prove had this case gone to trial?

24 MS. ALTMAN: Your Honor, had this case gone to
25 trial there would have been testimony that a search

1 warrant was executed at the defendant's home in Madison,
2 Wisconsin on June 1st of 2011. Numerous computers, hard
3 drives, phones, and media were seized and analyzed.

4 The testimony would show some time between December
5 1st of 2010 and January 11th of 2011, the defendant
6 received a picture on his cellular phone via text
7 message. The picture depicted an identified minor,
8 Minor B, who was born in August of 1994. The picture
9 showed Minor B with her legs spread and a closeup of her
10 vagina. Minor B had a maroon and white piece of
11 clothing around her waist. Her breasts were also
12 visible.

13 Minor B was interviewed and said she sent the
14 picture to the defendant's cell phone via text message.
15 The image was also found in a folder on the defendant's
16 hard drive that was titled with Minor B's name followed
17 by 16 YO, as in years old.

18 There would have also been testimony that on
19 February 27th of 2011, the defendant received a picture
20 of Minor C, an identified minor born in 1995, on his
21 cell phone. The picture showed a closeup of Minor C's
22 vagina. Minor C was interviewed and said that she sent
23 the picture to the defendant's cell phone via text
24 message. This image was also found in a folder on the
25 defendant's hard drive that was entitled with Minor C's

1 name followed by 15 YO.

2 The defendant was interviewed on June 1st of 2011
3 following the execution of the search warrant. In that
4 interview he admitted receiving what he called
5 pornographic pictures from high school girls.

6 There would have been evidence that Minors B and C
7 lived in the Western District of Wisconsin and sent the
8 photos from their homes. And also Madison, Wisconsin is
9 in the Western District of Wisconsin.

10 THE COURT: Is that your understanding of the
11 agreement -- of what Ms. Altman would be able to prove
12 if the case went to trial?

13 MR. DUTCH: Yes, it is, Judge.

14 THE COURT: And Mr. Valley, from what you know
15 about the case, do you think there's anything that
16 Ms. Altman has gone over that she could not prove at
17 trial?

18 THE DEFENDANT: No.

19 THE COURT: Would you tell me in your own words
20 what you did in connection with Count 1 and Count 2.

21 THE DEFENDANT: I had texted both females and
22 received photos from them.

23 THE COURT: So you received the depiction.

24 THE DEFENDANT: Yes.

25 THE COURT: And you knew that you were going to

1 receive it.

2 THE DEFENDANT: Yes.

3 THE COURT: And it was a depiction of
4 lascivious exhibition of the genitals and pubic area of
5 Minor B as far as Count 1 was concerned?

6 THE DEFENDANT: Yes.

7 THE COURT: And that was on or about -- that
8 was some time between December 1st, 2010 and January
9 11th of 2011. And then as far as Count 2 is concerned,
10 that is alleged to have happened, and you agree that it
11 happened, on or about February 27th, 2011?

12 THE DEFENDANT: Yes.

13 THE COURT: In the Western District of
14 Wisconsin. And again, you received this visual
15 depiction knowingly --

16 THE DEFENDANT: Yes.

17 THE COURT: -- by cell phone. And the
18 depiction was of the lascivious exhibition of the
19 genitals and pubic area of Minor C.

20 THE DEFENDANT: Yes.

21 THE COURT: Then Mr. Valley, on the basis of
22 this discussion with you and your attorney and upon the
23 basis of the entire record in the case, I find and
24 conclude that you have entered a plea of guilty
25 knowingly, understandingly and voluntarily after an

1 adequate opportunity to consult with your attorney, with
2 an understanding of the nature of the charge and with an
3 understanding of the consequences of a plea of guilty.

4 I'm satisfied there is a factual basis for the
5 plea. Accordingly, I find and adjudge you guilty of the
6 two charges contained in the Information, Count 1 and
7 Count 2.

8 I accept the plea agreement conditionally pending
9 review of the presentence report. That report is to be
10 filed no later than May 28th. And if you want the full
11 35 days, Mr. Dutch, we're looking at July 16th. If you
12 want an earlier sentencing date, it could be as early as
13 June 20.

14 MR. DUTCH: No. We would like the full amount,
15 Judge, and so July 16th would be fine.

16 THE COURT: All right. And your objections
17 will be due July 1st. Does that work for you,
18 Ms. Altman?

19 MS. ALTMAN: It does, Your Honor. But I missed
20 the time on the 16th.

21 THE COURT: Pardon me?

22 MS. ALTMAN: I'm sorry, I missed the time on
23 the 16th.

24 THE COURT: I didn't say it. That's why you
25 missed it. One o'clock.

1 MS. ALTMAN: Thank you.

2 MR. DUTCH: Thank you, Judge.

3 THE COURT: Anything else at this time?

4 MR. DUTCH: No, Judge.

5 MS. ALTMAN: No, Judge.

6 THE COURT: All right. Court will adjourn.

7 (Proceedings concluded at 1:55 p.m.)

8

9 * * * * *

10 I, LYNETTE SWENSON, Certified Realtime and Merit
11 Reporter in and for the State of Wisconsin, certify that
12 the foregoing is a true and accurate record of the
13 proceedings held on the 23rd day of April 2013 before
14 the Honorable Barbara B. Crabb, District Judge for the
Western District of Wisconsin, in my presence and
reduced to writing in accordance with my stenographic
notes made at said time and place.
Dated this 5th day of September 2013.

15

16

17 /s/_____

18 Lynette Swenson, RMR, CRR, CBC
19 Federal Court Reporter

20

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